

Remarks

Page 1, lines 5-12 of the present application discloses that platy titanium dioxide pigments, titanium dioxide and/or iron oxide coated on inorganic platy substrates and combinations thereof are used in ingestible drugs or foods. In the present amendment to claim 22, Applicant is claiming the platy effect pigment and not the combination thereof with titanium dioxide and/or iron oxide coated on inorganic platy substrates. Thus, this amendment is supported by the present application and is not new matter.

Claims 24-31 have been rejected under 35 USC §101 as claiming the same invention as that of claims 1-3, 6-8, 11-13, and 16-18 of prior US Patent 6,627,212. Applicant respectfully disagrees with the Examiner for the following reasons.

Under MPEP §800, the reliable test is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. In the present application, claims 24, 26, 28, and 30 depend on claim 22 and claim 22 recites the presence of a foodstuff. In US Patent 6,627,212, claim 1 recites the presence of a drug. Since the specification (page 1, lines 22-25) defines drug as other than food, claim 24 of the present application may be literally infringed without literally infringing claim 10 of US Patent 6,627,212. Claim 26 of the present application may be literally infringed without literally infringing claim 11 of US Patent 6,627,212. Claim 28 of the present application may be literally infringed without literally infringing claim 1 of US Patent 6,627,212. Claim 30 of the present application may be literally infringed without literally infringing claim 2 of US Patent 6,627,212. In the present application, claims 25, 27, 29, and 31 depend on claim 23 and claim 23 recites the presence of a beverage. Since the specification (page 1, lines 18-20) uses beverage and drug separately, claim 25 of the present application may be literally infringed without literally infringing claim 10 of US Patent 6,627,212. Claim 27 of the present application may be literally infringed without literally infringing claim 11 of US Patent 6,627,212. Claim 29 of the present application may be literally infringed without literally infringing claim 1 of US Patent 6,627,212. Claim 31 of the present application may be literally infringed without literally infringing claim 2 of US Patent 6,627,212. Thus, Applicant respectfully requests withdrawal of this rejection.

Claims 21-23, 32, and 33 have been rejected under the judicially created doctrine of double patenting over claims 1, 4, 5, 10, 14, 15, 19, and 20 of US Patent 6,627,212 since the claims, if allowed, would improperly extend the right to exclude already granted in the patent. In response to this rejection, Applicant has attached a Terminal Disclaimer to overcome this rejection.

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Applicant believes that this patent application is in condition for allowance and respectively requests receipt of a Notice of Allowance. Should the Examiner have any further questions or require further clarification, the Examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,

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Attachment – Terminal Disclaimer

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